

**Montre O. Robinson,**

**Petitioner,**

**Vs.**

**Warden David Marquis,**

**Respondent.**

**CASE NO. 3:18 CV 00923**

**JUDGE PATRICIA A. GAUGHAN**

## Memorandum of Opinion and Order

## INTRODUCTION

This matter is before the Court upon the Report and Recommendation of Magistrate Judge George J. Limbert (“R&R”)(Doc. 10) which recommends dismissal of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner did not file objections to the recommendation, despite being granted an extension to do so. For the following reasons, the Report and Recommendation is ACCEPTED.

## STANDARD OF REVIEW

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.”

## DISCUSSION

Petitioner is incarcerated as a result of his 2014 convictions of murder, tampering with evidence, and aggravated possession of drugs. The Petition for Writ of Habeas Corpus asserts three grounds for relief. Ground One asserts ineffective assistance of appellate counsel, Ground Two asserts a double jeopardy violation, and Ground Three asserts a deprivation of his right to a jury trial.

The Magistrate Judge concluded, upon the appropriate standard of review, that Ground One was without merit. The Magistrate Judge noted that because petitioner's conviction of murder was permitted under Ohio law, petitioner did not meet his *Strickland* burden of establishing ineffective assistance of appellate counsel for failure to raise the issue on direct appeal. With respect to Grounds Two and Three, the Magistrate Judge observed that since neither of these grounds were properly presented to the Supreme Court of Ohio, they were procedurally defaulted.

Having no objections, the Court has reviewed the Report and Recommendation and found no clear error. Accordingly, it accepts the recommendation.

### **CONCLUSION**

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge's Report and Recommendation, which is incorporated herein, the Petition for Writ of Habeas Corpus is dismissed. Furthermore, the Court certifies, pursuant to 28 U.S.C. §1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. §2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
United States District Judge  
Chief Judge

Dated: 1/22/20